In The Matter Of:

United States vs.
PFC Bradley E. Manning

Vol. 16
July 9, 2013
UNOFFICIAL DRAFT - 07/09/13 Afternoon Session

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1   VOLUME XVI

2

3 UNITED STATES

4 VS.

5 MANNING, Bradley E., PFC   COURT-MARTIAL

6 U.S. Army, xxx-xx-9504

7 Headquarters and Headquarters Company,

8 U.S. Army Garrison,

9 Joint Base Myer-Henderson Hall,

10 Fort Myer, VA 22211

11 _____/

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13   The hearing in the above-eitled matter

14 was continued on Tuesday, July 9, 2013, at 1:22 p.m.,

15 at Fort Meade, Maryland, before the Honorable Colonel

16 Denise Lind, Judge.

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 1                    DISCLAIMER

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 4   reporter who is not the official Government reporter,

 5   was not permitted to be in the actual courtroom where

 6   the proceedings took place, but in a media room

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10   control the proceedings in order to produce an

11   accurate verbatim transcript.

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16   editing purposes, misspelled terms and names, word

17   combinations that do not make sense, and missing

18   testimony or colloquy due to being inaudible to the

19   reporter.

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 1   APPEARANCES:

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 3           ON BEHALF OF GOVERNMENT:

 4               MAJOR ASHDEN FEIN

 5               CAPTAIN JOSEPH MORROW

 6               CAPTAIN ANGEL OVERGAARD

 7               CAPTAIN HUNTER WHYTE

 8               CAPTAIN ALEXANDER van ELLEN

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10           ON BEHALF OF ACCUSED:

11               DAVID COOMBS

12               CAPTAIN JOSHUA TOOMAN

13               MAJOR THOMAS HURLEY

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 1                    PROCEEDINGS

 2           THE COURT:  Please be seated.  The court is

 3  called to order.  Let the record reflect all those

 4  present in the court at the last recess are again

 5  present and the witness is on the witness stand.

 6           All right.  I have been presented with

 7  three cases from the government.

 8           MR. FEIN:  Yes, ma'am.  The United States

 9  sent an E-mail just a little bit ago explaining where

10  the fourth case is.  The federal case of USA v. Kim is

11  under seal.  It was released this morning.  An

12  unclassified, redacted version was released under seal

13  and the federal prosecutors are right now in session.

14  It started at 13:00 today, asking the Federal Court if

15  they could release it to this court in defense in order

16  it to be referenced and we have not received a reply

17  yet because they went into session at 13:00.

18           THE COURT:  All right.  So where are we

19  with the -- you want to move the books in?

20           MR. COOMBS:  Yes, Your Honor.

21           I guess two things.  One, if the government
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 1  is aware of some information that they might be able to

 2  give a proffer to the court what they're hoping that

 3  opinion might say that would reference the first prong

 4  that we believe the three cases that they gave to the

 5  court doesn't address and that's whether or not this

 6  information would be potentially damaging or useful to

 7  the enemy.  We believe that the court would still

 8  consider even the non-CSRTs in ARB information for that

 9  purpose.

10          THE COURT:  Does the case that's

11  forthcoming address the first or the second part of --

12  relate to the national defense, whether it would be

13  potentially damaging to the United States or might be

14  useful to a enemy of the United States, with is prong

15  one, or closely held, which is prong two.

16          MR. COOMBS:  It addresses prong one, Your

17  Honor.  We believe it's on point and it would be

18  beneficial to the court to consider it.

19          THE COURT:  Well, then how do you want to

20  proceed?

21          MR. COOMBS:  The defense would recommend
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1 that the government go ahead and give a proffer if

2 they're aware of what information is and then,

3 depending upon what they say, I may even concede, for

4 the purposes of today's argument, that the court could

5 accept that as the gospel coming from the D.C. Circuit

6 and then make a determination.

7   THE COURT: Is it a D.C. Circuit case or a

8 district court case?

9   MR. MORROW: It's a trial.

10   THE COURT: Do you know what the proffer is

11 going to be or are you in a position where you can say

12 that yet because it's under seal?

13   MR. MORROW: Your Honor, I would rather

14 not. It's under seal. I would rather not.

15   THE COURT: Well, let's look at the closely

16 held piece, then. You've given me three cases that all

17 address "closely held."

18   MR. MORROW: Yes, and, actually, at least

19 (inaudible) cases were related to the instructions,

20 your draft instructions with respect to the sort of

21 whether you can consider when something is closely held

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 1  and it's in sources lawfully available to the public

 2  and released by the government or information itself

 3  that contributed to the -- the sources of information

 4  that contributed the information that's at issue,

 5  whether that stuff has been released by the government.

 6          THE COURT:  So what about the last line of

 7  the instruction?  I drew my instructions directly from

 8  United States vs. Abu Jihaad, United States vs.

 9  Sulocoat (phonetic) and United States vs. O'Brien.

10          So with the instruction that I'm going to

11  give or I would have given to members is essentially

12  the same.

13          MR. MORROW:  We agree, Your Honor.  We just

14  don't think that that instruction encompasses

15  information that's just on the Internet.

16          THE COURT:  Well, what about the last

17  sentence where the sources of information are lawfully

18  available to the public and the United States

19  government has made no effort to guard such

20  information, the information does not relate to the

21  national defense?
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 1   MR. MORROW: Our position in that case,

 2 Your Honor, is that -- the government's position that

 3 the detainee assessment briefs were not public. They

 4 were not public. The second prong, then, were the

 5 sources of information. So our government's position

 6 would be that would be the intelligence reporting that

 7 goes into the dabs (phonetic), the interrogation

 8 reports, et cetera, where that has also not been

 9 released to the public, that indicates that the

10 information is closely held. The sources of

11 information and information. That would be our

12 position.

13   THE COURT: Does the government agree it's

14 a fact finder question?

15   MR. MORROW: Yes.

16   THE COURT: The defense agrees it's a fact

17 finder question?

18   MR. COOMBS: Yes, Your Honor.

19   THE COURT: And I would be interested in

20 and seeing the case for prong one, but I'm also

21 thinking for prong 2 the cross-examination from the

1 government did go into what was highlighted, came from

2 government sources and what didn't. For that reason

3 alone, I'm looking at how -- without admission of those

4 documents, I don't have any idea what came from

5 government sources and what didn't.

6   MR. MORROW: Well, based on Colonel Davis's

7 answers, the government's position is that with respect

8 to the detainees, none of it came from sources lawfully

9 available to the public. So if there was stuff on the

10 Internet, statements made, a movie...

11   THE COURT: The defense has proffered that

12 this is admissible based on the cross-examination, I

13 presume?

14   MR. COOMBS: Yes, Your Honor.

15   THE COURT: Under MRA703.

16   What's the government's position with

17 respect to that?

18   MR. MORROW: One moment, Your Honor.

19   Obviously, as the court's a fact finder,

20 they can address the weight of the evidence, in which

21 case we still contend that the use of sources just

 1 willie-nillie off the Internet would be more

 2 prejudicial to the government.

 3   THE COURT: All right. I think I can use

 4 the evidence for its proper purpose. Just to move

 5 things along before we get to the case, under prong

 6 two, under the closely held and based on the

 7 cross-examination, I'm going to go ahead and allow it.

 8   MR. MORROW: Okay. Thank you, Your Honor.

 9   MR. COOMBS: Your Honor, just a brief

10 foundation for the evidence.

11   DIRECT EXAMINATION BY MR. COOMBS:

12   Q   I'm handing you what's been marked as

13 exhibit alpha-alpha for identification.

14   Can you just glance at that for a moment

15 and tell me if you recognize that?

16   A   (Witness complied).

17   Q   What is that, in general terms?

18   A   It's the binder of publicly available

19 information related to the three closely related

20 detainee assessment briefs.

21   Q   And are there highlighted portions within

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 1  this binder?

 2       A     Yes.

 3       Q     And who made those highlights?

 4       A     I did.

 5       Q     Are there also tabs, basically, for --

 6  within the binder?

 7       A     Yes.

 8       Q     And who put those tabs in?

 9       A     I did.

10       Q     What do those tabs signify?

11       A     Obviously, it's a fairly thick document.

12  The pages where items were marked.

13            MR. COOMBS:  I'm retrieving exhibit

14  alpha-alpha for identification from the witness and

15  moving as exhibit alpha-alpha for identification into

16  evidence as defense exhibit alpha-alpha.

17            THE COURT:  All right.  Government, I heard

18  your objection.  I basically overruled it.  So defense

19  alpha-alpha is admitted.

20            MR. MORROW:  And, Your Honor, if the same

21  foundation will be laid for all three, we'll stipulate
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1   to that.

2   THE COURT: So I assume it's bravo-bravo

3   and charlie-charlie?

4   MR. COOMBS: That is correct, Your Honor.

5   So for each one of these, Colonel Davis would identify

6   the documents as being the open source for respective

7   DAV and also that the highlights that were made within

8   these documents were made by him as well as the tabs

9   that were placed there were placed there by him.

10   THE COURT: All right. Let me see them and

11   I'll admit those as well.

12   MR. COOMBS: Your Honor, no further

13   questions.

14   THE COURT: Okay.

15   MR. MORROW: One moment, Your Honor.

16   (Pause.)

17   Nothing further.

18   THE COURT: All right. Temporary or

19   permanent excusal?

20   MR. COOMBS: Permanent, Your Honor.

21   THE COURT: Mr. Davis, you are permanently

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 1   excused.  You are free to go or you can stay in the

 2   courtroom.

 3               THE WITNESS:  Thank you.

 4               MR. COOMBS:  The defense calls Mr. Cassius

 5   Hall.

 6               MR. MORROW:  Your Honor, for the record,

 7   I'm leaving the courtroom.

 8               THE COURT:  And that would be for the

 9   record, Captain Morrow?

10               MR. MORROW:  Yes, ma'am.

11               (Mr. Morrow left courtroom.)

12   Whereupon,

13                    CASSIUS HALL,

14   called as a witness, having been first duly sworn to tell the truth,

15   the whole truth, and nothing but the truth, was examined and testified

16   as follows:

17               MS. OVERGARD:  You may be seated.

18               And you are Mr. Cassius Hall of INSCOM at

19   Fort Belvoir, Virginia?

20               THE WITNESS:  I am.

21               EXAMINATION BY MR. COOMBS:
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1   Q   Mr. Hall, you are a security specialist

2 subject matter expert with INSCOM; is that correct?

3   A   Yes, sir.

4   Q   And INSCOM is the Intelligence and Security

5 Command?

6   A   Yes, it is.

7   Q   Now, you were assigned as a security

8 subject matter expert for the defense in this case?

9   A   Yes, in August 2010.

10   Q   And how were you selected to act as the

11 defense security expert?

12   A   Well, the tasking came down to our command

13 and my director called me into the office and she said

14 it related to a lot of classification and ensuring that

15 documents were identified correctly, marked correctly.

16 So by me being the classification advisory officer for

17 INSCOM, I was selected for the task.

18   Q   Are you knowledgeable on the job of a 35

19 fox and intelligence analyst?

20   A   Well, at the time when I was a United

21 States bravo I'll say yes, I am.

1   Q   So the MOS has changed from a 96 bravo to a

2   35 bravo?

3   A   Yes, I think they made a conversion. I

4   believe -- I think it was in 2007 but essentially it's

5   the same thing.

6   Q   Did you review the charge SigActs in this

7   case?

8   A   I did.

9   Q   And did you review the classification

10   review of the SigActs by Vice Admiral Robert Harwiggen

11   (phonetic)?

12   A   Yes, I did.

13   Q   Mr. Hall, are you prepared today to tell us

14   about the duty position of a 35 fox and the charge

15   SigActs?

16   A   I am.

17   Q   Let's begin by discussing your general

18   background, okay?

19   A   Okay.

20   Q   Again, you are a security expert?

21   A   I am, sir.

1   Q   How long have you been in your current

2   position with INSCOM?

3   A   Well, I accepted the position with INSCOM,

4   I believe it was, April of 2008.

5   Q   So roughly about four or five years?

6   A   About five or six years now.

7   Q   And how did you become the security expert

8   with INSCOM?

9   A   Well, I was hired based on my years of

10 experience and, of course, the job had indicated that

11 they were looking for someone with intelligence

12 background also. So I fit into that category and then

13 some schools that I have had and basically that was it.

14   Q   Now, have you ever been in the military?

15   A   I have, sir.

16   Q   And how long were you in the military?

17   A   Roughly around 22 years.

18   Q   And you earlier said your MOS was 96 bravo.

19 Was it a 96 bravo for the entire time?

20   A   Yes.

21   Q   And can you briefly tell the court some of

 1 your previous positions when you were in the military?

 2   A   I started off on the tactical side. My

 3 first assignment was with (inaudible) Fulda Gap in

 4 Germany. I then left there and I graduated and moved

 5 up to what we call strategic and my 513th which was

 6 based out of a Fort Mott, New Jersey. During the time

 7 of the 513th, I had operation Just Cause, went to

 8 Desert Storm I, numerous training opportunities which

 9 is keeping up on your skills. They were sending me a

10 lot of places.

11   I then left there and went back to the 11th

12 ACR in Germany where I served as the S2 OIC. I then

13 left there, did a cut and went down to K'town,

14 Kaiserlautern, also in Germany, where I was the ANIC of

15 the G2. I left there and went to Fort Huachuca and

16 took a special assignment, the ACRC program. I did

17 that and then I finished my career at Fort Myer.

18   Q   What year did you retire from the military?

19   A   End of 2004.

20   Q   And what was your rank at the time of

21 retirement?

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 1        A      I was a master sergeant.

 2        Q      What did you do after retiring?

 3        A      I then applied for a job there at Fort

 4   Myer.  They needed an intel person.  So I became the

 5   chief of the security and intel branch which was a

 6   small branch where I handled information security and

 7   then I started as the liaison to the IC community.

 8        Q      And can you explain to the military judge

 9   kind of a normal day in that position as the chief of

10   security and intel division for Fort Myer?

11        A      Ma'am, on a normal day we handle

12   information security.  I had another guy that worked

13   for me handling the personnel security and conducted

14   the background checks.  A lot of my job included going

15   and doing meetings with the IC community, keeping up on

16   the thread.

17               Any time there's a contingency mission, as

18   you know, Murray handles a lot of VIPs.  So I was

19   getting all the intel information as well as supportive

20   and enforcement protection officer who was actually the

21   operation officer with all the incoming intel
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1 information identifying any threats and stuff.

2   Q   And how long were you in position of chief

3 of security in intel division at Fort Myer?

4   A   About four years.

5   Q   And where did you go after that position?

6   A   I then accepted a position with INSCOM G2.

7   Q   And within your job at INSCOM, what do you

8 do as part of INSCOM?

9   A   I'm assigned to the intelligence and

10 security division which is located at G2 of INSCOM.

11 Within INSCOM, we handle oversight of all of our MSCs,

12 our units around the world, anything under information

13 security, whether it's -- based on my level, we handle

14 the policy, creating the policy, doing oversight of

15 inspection. I also handle the classifications for

16 INSCOM.

17   Q   What do you mean by classification for

18 INSCOM?

19   A   I am the classification advisory officer

20 which is my primary job and I handle, basically, a lot

21 of security classification guides and I think we have a

1 total of 19 or 20 security classification guides. I

2 review the security classifications. I have to ensure

3 that they're up-to-date within the five-year review. I

4 put them together and any new guides created. I put

5 all the information together, review all of the

6 information and then I take them to the CG for

7 signature.

8   Q   Are you authorized in your position to

9 declassify documents?

10   A   I am. We have authority from the CG to the

11 classification officer that we declassify documents.

12   Q   In general, how often do you declassify

13 documents in your position?

14   A   It depends. Usually the declassification

15 documents may come down to FOIA. We manage to get a

16 call in, someone inquiring about a document and we send

17 them to our PAO office. Most of the time it comes from

18 FOIA. And when it comes down, I review to see if that

19 document can be declassified to tell you that -- by

20 working in the intelligence community, a lot of that

21 information contains sources and methods. So we never

 1 release sources and methods.

 2   Q   All right. Let's talk some more about your

 3 current position.

 4   In your position, do you teach at all?

 5   A   Yes, some of the MSCs, they will request

 6 that we come out and give a classification class,

 7 current classification. So we would go out to the MSCs

 8 and we would do an overview of document instructions on

 9 declassification. We try to do that quite often. But

10 we rotate amongst our team because we were all trained

11 and qualified to do that.

12   Q   How many years in total have you been

13 handling classified information?

14   A   About 28.

15   MR. COOMBS: Your Honor, at this time, we

16 tender Mr. Hall as an expert in the job of an

17 intelligence analyst and handling classified

18 information.

19   THE COURT: Where are you going with this?

20   MR. COOMBS: Your Honor, we intend to

21 describe the job of intelligence analyst and his review

 1 of the SigActs and comparing the SigActs with the open

 2 source.

 3   THE COURT: Are you going to ask an

 4 ultimate opinion as we did with Mr. Davis?

 5   MR. COOMBS: No, Your Honor.

 6   THE COURT: Any objection?

 7   MS. OVERGAARD: One moment, please, ma'am.

 8   THE COURT: While they're conferring, can

 9 you name those expertises again?

10   MR. COOMBS: Yes, Your Honor. As an

11 intelligence analyst, he served 22 years as an

12 intelligence analyst. And as handling classified

13 information, he has done that for 28 years.

14   (Pause.)

15   MS. OVERGARD: The government would just

16 object to the broadness of it. Maybe if it was

17 narrowed more for reference to his testimony.

18   THE COURT: Let's do this. I'm going to --

19 I'll accept the expertise. If we start getting way far

20 afield, I may revisit this, but go ahead.

21   MR. COOMBS: Thank you, Your Honor.

1 BY MR. COOMBS:

2   Q   Mr. Hall, let's turn to what you did in

3 this case, why you did it and how you did it. Okay?

4   A   Yes, sir.

5   Q   All right. First, can you tell the court,

6 generally, what you did in this case?

7   A   Ma'am, I was tasked to review the charge

8 SigActs. I think it's specification 5 and 7, charge 2,

9 to review for proper classification to see if they was

10 classified properly in (inaudible) 1 through 5 through

11 6. I reviewed the damage assessment, I think the DIA

12 and I reviewed the OCA's classification review.

13   Q   And why did you review the charge SigActs

14 in this case?

15   A   Well, I reviewed, first thing, to see if

16 they was properly classified, of course with the

17 executive order and then we was tasked to do so.

18   Q   Now, how did you conduct your review of the

19 charts against --

20   THE COURT: Let me just ask you before you

21 get there. You were tasked to do so by who?

 1   THE WITNESS: By Mr. Coombs.

 2   THE COURT: Okay. Go ahead.

 3   BY MR. COOMBS:

 4   Q   And how did you conduct your review of the

 5   charge SigActs?

 6   A   We individually reviewed the charge SigActs

 7   and then compared them again with the OCA's

 8   determination.

 9   Q   Did you review all of the SigActs or just

10   the charge SigActs?

11   A   Just the charge SigActs. Not all of them,

12   just the charge SigActs.

13   Q   And how many SigActs, approximately, did

14   you review?

15   A   I believe there's 102.

16   Q   And what did you do after pulling the

17   charge SigActs and comparing them with the

18   classification guide?

19   What else did you do?

20   A   Again, pull the SigActs, to look at them

21   and to get any type of identifying data that we could

 1 use to do a search on the open domain.

 2   Q   And before we get to your open source

 3 search, did you review the OCA's classification

 4 determination?

 5   A   Yes, I did.

 6   Q   And why did you review that?

 7   A   Just reviewed to see if it was in

 8 accordance with the executive order and it was.

 9   Q   And with regards to the open source

10 information, can you explain what you mean by open

11 source information?

12   A   Well, it's anything that's available to the

13 public. Anybody can do a research on the Internet and

14 pull it up.

15   Q   And did you do any sort of date restriction

16 for your open source?

17   A   We did. Anything -- we set the filter on

18 anything prior to the release of the leak.

19   THE COURT: Prior to?

20   THE WITNESS: The release of the leak.

21 BY MR. COOMBS:

1   Q   So if I'm understanding you correctly,

2 everything that you found from open source predated the

3 release of this -- of the charge information?

4   A   Yes. If one of the SigActs was dated, say,

5 in June of '07, then anything prior to that we

6 researched.

7   Q   Now, before we talk about the results --

8   THE COURT: Wait a minute. So explain that

9 to me again. The SigAct is dated in 2007?

10   THE WITNESS: As an example, say if the

11 date of the SigAct was June 2007, then I would restrict

12 the filter to 2007 and prior. So I think we went back,

13 like, two years, 2007 to 2005.

14   THE COURT: The date of the release of the

15 information or the date of the SigAct?

16   THE WITNESS: The date of the SigActs,

17 ma'am.

18   THE COURT: Okay. Go ahead.

19 BY MR. COOMBS:

20   Q   Now, before we talk about that and what the

21 results were, I want to ask you a few questions about

1   SigActs in general. Okay?

2   A   Yes, sir.

3   Q   Now, in general, what information is

4   reported in a SigAct?

5   A   A SigAct is a quick snapshot of the

6   information that's ongoing at that point in time. So

7   it's information that one observes, a significant event

8   that is reported up the chain.

9   Q   And in this case, did any of the charge

10 SigActs contain anything like photographs, videos or

11 other reports or was it just a snapshot of the

12 information that happened at the time?

13   A   It was just a snapshot of information.

14 There was no photographs or anything else.

15   Q   And can you explain how an intelligence

16 analyst, a an 6 bravo in your day and a 35 fox

17 currently might use a SigAct to create a work product?

18   A   Well, since a SigAct is briefly just --

19 it's not detailed information. It's just a quick

20 snapshot of what has occurred.

21   You would take that information, research

 1   other databases that you can pull from the intel

 2   community or whatever is readily available. Then you

 3   would incorporate this information and produce

 4   intelligence product. So you would basically have

 5   multiple sources when you create this product.

 6   Q   So how does an intelligence analyst create

 7   their product?

 8   A   Well, there's numerous ways but the way to

 9   create is that you would take all of this information,

10   you would put it together you would basically vent

11   information to be sure that you are getting the right

12   information and it's from a good source.

13   A lot of times you may not have a good

14   source or the information that not be as good. So,

15   therefore, you need that information to put it together

16   and then, when you do that, you create an intelligence

17   product or an intelligence briefing that you're going

18   to be giving a commander.

19   Q   And can you provide the court with a

20   hypothetical example of an intelligence product?

21   A   We use MSRs all the time which is the main

 1 supply route. So you could actually -- the enemy

 2 that's on a main supply route, what do they pose? What

 3 does the enemy pose on a main supply route?

 4   Q   Mr. Hall, did you prepare a visual aid to

 5 assist your testimony?

 6   A   I did something similar to that.

 7   Q   Mr. Hall, I'm showing you defense

 8 delta-delta for identification.

 9   Do you recognize that?

10   A   I do, sir.

11   Q   What is that?

12   A   This is the example that I created. It's

13 basically an example, four months of information put

14 together.

15   Q   Now, is this an actual -- based upon actual

16 SigActs?

17   A   No, it's not. No.

18   Q   So this is just a hypothetical?

19   A   This is an example I want it to be.

20   MR. COOMBS: Retrieving defense exhibit

21 delta-delta for identification.

 1   Your Honor, permission to publish?

 2   THE COURT: Go ahead.

 3   BY MR. COOMBS:

 4   Q   Mr. Hall, if I could, I'd like to kind of

 5   go through this slide a little bit.

 6   Would this help you in your testimony?

 7   A   Yes, sir.

 8   Q   What does this diagram detect right here?

 9   Can you kind of walk us through it?

10   A   Well, as in any briefing of a map, you have

11   the legend, of course, and then you've got the month in

12   the right-hand corner. That's broken down. So this

13   represents the first month of information that you

14   would get from your database, whether it be SigActs or

15   some other type of database that the unit or agency may

16   be keeping.

17   Q   And with regards to the town 1, town 2,

18   town 3, what are those towns along on the map?

19   A   They are along the MSR, which is the main

20   supply route. So I did 1 and 2 and 3 just to represent

21   the towns that show something significant on there and

1   then the symbology for the other items.

2   Q   And when you say symbology, that's the

3   legend as far as what type of attack?

4   A   Right. You have some where you have an

5   attack on the base and then the ambush. So what you're

6   trying to do is you're trying to get a pattern analysis

7   of what is actually going on on the MSR.

8   So you would want to use more than one

9   month. The commander may say, hey, within the last 60

10 or 90 days I need to know the activities that has been

11 ongoing on the MSR. So you can't use one month or one

12 day because that doesn't given him anything. You have

13 to use more than that to give him the big picture.

14   Q   And so -- if I could, I want to show you --

15 for example, if we go to month 2, now again, here, how

16 did you change month 2 from month 1, just in general?

17   A   How did I change it?

18   Q   Yeah.

19   A   Oh, you'd add more activity. That's why

20 town 2 is circled.

21   Q   Okay. So, as you said, you would do

1 multiple months of information with apparently marking

2 where certain attacks occurred during that month?

3   A   Right. You want to show him where the

4 attacks are happening along the MSR so he would be able

5 to make a calculated decision in reference to convoys

6 going on in the future.

7   Q   Now, is it easy for an analyst to just take

8 information and plot it on the map?

9   A   Well, I would say it's probably easy from

10 the plotter, but they have to know what they're

11 plotting and how they're going to plot it.

12   So I would say yes, it's easy for them to

13 do the research. But, first of all, they gotta know

14 what they're researching in order to get the correct

15 information and plot it on map, they'd have to know

16 where to the plot it and the symbology to use. So,

17 yes, they could.

18   Q   And based upon this, like, if you were --

19 you know, had just gone through month one and finally

20 month four, if you were showing these four months on a

21 PowerPoint slide presentation to a commander, what

1 would, then, an analyst use these diagrams in order to

2 advise the command on?

3   A   What would he use?

4   Q   The diagrams. Like, what would you use

5 this information, then, to tell the commander?

6   A   Well, you would tell -- I mean, basically,

7 do a predictive analysis on everything. You would give

8 him what we expect the enemy to do, the enemy's course

9 of action.

10   Q   And how would you make predictive analysis

11 based upon the stuff that you plotted on a map?

12   A   By doing an analytical review of all of it,

13 plus when you develop a pattern analysis, you get a

14 tree-in (sic) and with the tree-in you can identify

15 what's going on along the MSR. So when you brief the

16 commander, then you're basically telling him this is

17 what we believe.

18   Q   And what would a commander -- once the

19 commander gets that information, what would a commander

20 use that information for?

21   A   Well, he needs to use it to adjust his

 1 | operations people going on the MSR so he can adjust his

 2 | course of actions.

 3 | Q   And the predictive analysis that you're

 4 | talking about, is that as easy to do as just plotting

 5 | points on a map?

 6 | A   Yeah, you've got to be in for a while and

 7 | have some good leadership and training in order to have

 8 | that done. Coming out of AIT just being a couple of

 9 | years within the military you can't -- as an analyst,

10 | you couldn't do it.

11 | THE COURT: Can I ask a question before you

12 | move on? With that months one through four, is that

13 | month one the recent month or month four the most

14 | recent month?

15 | THE WITNESS: Yes, ma'am. Month four would

16 | be the most recent one.

17 | THE COURT: So that means each month is its

18 | own compilation or is month two the compilation of

19 | months one and two?

20 | THE WITNESS: Right. Month two has -- it's

21 | showing the trans of month one as we started off, month

1 two, you add more to it and month three and then four,

2 the final is the cutoff.

3   THE COURT: It's the accumulation of all

4 four months?

5   THE WITNESS: It's the accumulation of

6 everything. So you gotta have that in order to give

7 the commander the big picture.

8 BY MR. COOMBS:

9   Q   Now, let's talk about the open source

10 research that you conducted on the charge SigActs in

11 this case. Okay?

12   A   Yes, sir.

13   Q   How did you find your open source

14 information again or they charge SigActs?

15   A   Well, what we did basically did is that we

16 used Google and we went on and we did a restrictive

17 date and then --

18   THE COURT: We did?

19   A   Restrictive date, as I stated earlier, and

20 then identified a couple of key words within the

21 SigActs and then punched it into Google.

1   Q   And did you find open source for every

2 SigAct?

3   A   No, no.

4   Q   How many SigActs did you find open source

5 information for?

6   A   I think it was 60 or 62, but it wasn't

7 detailed information. Just keep in mind SigActs is not

8 a detailed report.

9   Q   Now, the SigActs that you couldn't find

10 open source information on, in general, what were those

11 SigActs about?

12   A   As I recall, I think they was about IEDs,

13 small arms, fire. Might have been something if a

14 telephone call was received or incoming, as I remember.

15 I don't know.

16   Q   Now, the ones that you did find open source

17 information about, in general, what type of open source

18 information did you find on them?

19   A   What kind?

20   Q   What type? Like, were they news stories,

21 were they government releases?

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 1        A      They was, like, news stories.  In other

 2  words, if a soldier was KIA or WIA, you would find

 3  that.  That's in there, what I came across.

 4        Q      All right.  And how did you capture the

 5  open source information that you found?

 6        A      I went on and did the search and we kept

 7  information.  We created a database for a further link

 8  that went with the SigActs and then we printed -- I

 9  printed it off and then I compared it with the actual

10  SigActs.

11        Q      And once you printed off, I guess, the open

12  source, what did you do with that?

13        A      Reverified it, read the SigActs along with

14  the open source to see what type of information that

15  the open source contained, that the SigActs contained

16  and then I highlighted the open source.

17        Q      And based upon that information that you

18  found, did you reach any general conclusions about the

19  amount of open source information for the SigActs?

20        A      We came to a conclusion?

21        Q      Yes.
```

 1   A   Well, a lot of the information that we did

 2 research on, you know, you can find it in the open

 3 source. But it wasn't detailed information, no. It

 4 was information -- it wasn't a complete paragraph or a

 5 complete sentence, I don't believe. They just gave a

 6 brief description. Like, if a soldier was killed in

 7 Afghanistan, it had the soldier's name, but you can

 8 find that basically on DOD open website too.

 9   Q   Now, Mr. Hall, have you ever worked for

10 CentCom?

11   A   No, sir, I have not.

12   Q   Does your job require you to review

13 information from CentCom?

14   A   No, but I will review information if

15 CentCom had equities within their information and I

16 have done that on many occasions.

17   Q   Are you an original classification

18 authority?

19   A   No, sir, I'm not.

20   Q   Have you ever been an original

21 classification authority?

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 1        A     I have not.

 2        Q     In your field, would you publicly disagree

 3  with an original classification authority?

 4        A     Would I?

 5        Q     Correct.

 6        A     The OCA's decision is binding.  So when we

 7  deal with classified information, it always states that

 8  you always refer back to the OCA because it's not

 9  information that belongs to the OCA.

10        Q     In this instance, are you disagreeing with

11  the OCA that reviewed the charge SigActs?

12        A     No, sir.

13        Q     If you're not disagreeing, what are you

14  doing then?

15        A     If I don't agree with his decision, I mean

16  his decision -- as I stated earlier, I used the example

17  of a command of the first sergeant.  You may disagree

18  with something when you're behind closed doors, but the

19  commander says this is what I want.  So you drive on.

20  So I don't have -- it's not our information, so...

21        Q     And did I request that you give a
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41

 1 classification determination on the SigActs?

 2   A   No.

 3   Q   Mr. Hall, I'm showing you what's been

 4 previously shown to the government as exhibit whiskey

 5 for identification.

 6   Can you review that for a moment?

 7   A   (Witness complied.)

 8   Okay.

 9   Q   Do you recognize that?

10   A   I do.

11   Q   And, in general, what is it?

12   A   It's one of the SigActs that I reviewed.

13   Q   And does this SigAct contain any

14 highlights?

15   A   It does. The information that I

16 highlighted that -- basically what I found when I did

17 the research and open source.

18   Q   And how did you determine what to highlight

19 on that SigAct?

20   A   I compared it with the open source

21 document.

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 1        Q      Did you also highlight the open source

 2   document?

 3        A      Yeah, I did.  I compared them both, put

 4   them side-by-side.

 5        Q      I'm now showing you what's been marked as

 6   defense exhibit x-ray for identification previously

 7   shown to the government.  Take a look at that.

 8        A      (Witness complied.)

 9               Okay.

10        Q      And do you recognize that?

11        A      Yes, sir.  It's another SigAct that I

12   reviewed.

13        Q      And does that SigAct contain highlights?

14        A      It does, information that I highlighted

15   compared to what was found on the open source.

16        Q      And did you also make similar highlights in

17   the open source?

18        A      Uh-huh, I did.

19        Q      And you said that you did a review of all

20   the 100 SigActs.

21               For how many SigActs, again, did you find
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 1  open source information?

 2        A     I think it was 60 or 62, sir.  I believe it

 3  was 62, I believe.

 4        Q     Thank you.

 5              MR. COOMBS:  I'm retrieving the exhibits

 6  from the witness.  At this time, the defense offers

 7  defense exhibit whiskey for identification into

 8  evidence as defense exhibit whiskey.  And defense

 9  exhibit x-ray for identification into evidence as

10  exhibit x-ray.

11              THE COURT:  Any objection?

12              MS. OVERGAARD:  One moment, please, ma'am.

13                     (Pause.)

14                     No, ma'am.

15              THE COURT:  Defense exhibits whiskey and

16  x-ray are admitted.

17              MR. COOMBS:  No further questions.

18              THE COURT:  Cross-examination?

19              MR. FEIN:  Your Honor, the United States

20  asked for a recess so we can review these highlighted

21  documents we've never seen before before we start
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1 cross-examination.

2   THE COURT: How long do you think you'd

3 like?

4   MR. FEIN: 20 minutes, ma'am.

5   MR. COOMBS: Your Honor, we have two

6 similar documents for Mr. Ganiel. So maybe the

7 government can use this opportunity to look at those as

8 well.

9   THE COURT: Do you need additional time or

10 do you think 20 minutes is sufficient to look at all

11 four of the documents?

12   MR. FEIN: Ma'am, if we can go for 20 and

13 look at it and figure out what's the next step because

14 he also testified that he reviewed others documents.

15   So we're either going to have to go through

16 our discovery and find where it was or we'll ask the

17 defense and we'll do this later about getting copies of

18 the binders so we can look at it.

19   THE COURT: If there were similar binders

20 that are --

21   MR. COOMBS: There are, Your Honor.

 1   THE COURT: Okay. Why don't we -- let's

 2 try to be a little expeditious here and show the

 3 government what they are with the highlighting.

 4   MR. FEIN: We will, ma'am -- we'll do 30

 5 and we'll keep the court updated in the 30s and up.

 6   THE COURT: All right. That's just for all

 7 the documents and all the binders?

 8   MR. FEIN: Yes, ma'am.

 9   THE COURT: All right. That works. The

10 court is in recess, then, until -- before I put it in

11 recess, Mr. Hall, please don't discuss your testimony

12 or your knowledge of the case during the recess and the

13 court is in recess until 14:35 or 2:35.

14   (Court went into recess at 2:07 and the

15 trial resumed at 3:14 p.m.)

16   THE COURT: Please be seated. The court is

17 called to order. Let the record reflect all parties

18 present when the court last recessed are again present

19 in court. The witness is on the witness stand.

20 Proceed.

21 BY MR. COOMBS:

 1   Q   Mr. Hall, I just wanted to ask a question

 2 to clear up maybe a little bit of confusion that I

 3 might have had with my question to you.

 4   A   Yes, sir.

 5   Q   And that is: When you did your open source

 6 research review, what date or what period of time did

 7 you start your open source research and go back?

 8   A   For the SigActs, correct?

 9   Q   Correct.

10   A   Researched the date prior to the release.

11   Q   And when you say release, are you saying

12 the release of the charge information, the release by

13 Wikileaks?

14   A   Right, release from Wikileaks.

15   Q   All right. So it predated the release from

16 Wikileaks back to the date of when the actual SigAct

17 occurred, that would be open source information that

18 you were looking at?

19   A   Right. If the release from Wikileaks was

20 on the 10th, then we did a search on the 9th prior.

21   MR. COOMBS: Okay, thank you.

 1   THE COURT: Before I turn you over to the

 2   government, I just want to ask you that. Just to make

 3   sure I'm clear because I thought I asked you that

 4   before and got a different response.

 5   The date of the SigAct search, the date of

 6   when the release was from Wikileaks back to the date of

 7   SigAct, is that what your response...

 8   THE WITNESS: I got confused. I mean, we

 9   did a lot of research from the date that it was

10   released from Wikileaks.

11   THE COURT: Okay.

12   THE WITNESS: So, say it if was released on

13   the 10th, then we did a restrictive search on the 9th

14   and I think we went back maybe two years. I don't

15   remember the exact date. So say if it was released

16   from the 10th from Wikileaks, then we did a restrictive

17   search from the 9th of June prior.

18   THE COURT: Okay. So let's say the release

19   was in January of 2011.

20   THE WITNESS: Yes, ma'am.

21   THE COURT: And the SigAct was in 2006.

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 1  You would have gone from --

 2              THE WITNESS:  Right, we went back to the

 3  date of the SigActs.

 4              THE COURT:  So what's the two years?

 5              THE WITNESS:  Well, some SigActs, I think

 6  it was about 2009, I believe, as I recall.  But I don't

 7  remember seeing the SigActs from 2011.  It may have

 8  been, I don't know.  But we covered the date from the

 9  date of release to the Wikileaks past the actual date

10  of the SigActs.

11              THE COURT:  Okay.  So you went back to the

12  date -- so each search, then, was different depending

13  on the date --

14              THE WITNESS:  Yes, ma'am.

15              THE COURT:  Okay, thank you.

16              Government?

17              MR. FEIN:  Can I have a quick moment, Your

18  Honor.

19              THE WITNESS:  Yes (Pause.)

20              CROSS EXAMINATION BY MR. FEIN:

21      Q     Mr. Hall, could you please explain for the
```

1 court what your general duties are?

2   A   Start over.

3   Q   Mr. Hall, could you please explain for the

4 court what your general duties are and your role at

5 INSCOM?

6   A   My general duties, ma'am, as I stated

7 before, that I'm a classification advisory officer on

8 the security division team. We go out and we do

9 oversight, inspecting all of our units. I usually

10 handle the information side which covers everything

11 from classification, safe management, SOPs, policies,

12 and then, as I stated, we handle some of the training

13 when requested by the MSCs.

14   Q   And the commander of the U.S. Army INSCOM

15 is an original classification authority?

16   A   Yes, sir, he is.

17   Q   And he currently, or she, before had

18 delegated the declassification authority to the Army

19 G2?

20   A   No, INSCOM G2.

21   Q   I'm sorry. Thank you. The INSCOM G2?

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 1        A      Yes, sir.

 2        Q      And the INSCOM G2 was your boss?

 3        A      Right, Mr. MacAleary.

 4        Q      And when you did any type of

 5   declassification reviews, you were doing that for the

 6   declassification authority, the INSCOM G2?

 7        A      Yes, sir.

 8        Q      And you did those reviews based off of

 9   INSCOM owned information, correct?

10        A      Roger.

11        Q      And what did you do when you received

12   information, classified information, that did not

13   belong to the United States Army that may come into the

14   DRU unit within the Army?

15        A      Oh, we would sent it back up and let them

16   know.  I mean, we could call -- say if it belonged to

17   CentCom, we would call CentCom and say, hey, you got

18   some information, let's task it.  I came down for

19   declassification and you called the OCA and then it

20   would go back through the channels and then they would

21   forward it to CentCom because we can never touch
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 1   anybody else's information.

 2        Q      And who is the best position to evaluate

 3   whether information should or should not be

 4   declassified?

 5        A      You're talking within INSCOM?

 6        Q      Within the structure of classification.

 7        A      The OCA, sir.

 8        Q      Okay.  And that's why you, for INSCOM,

 9   didn't review CentCom owned information?

10        A      Right.

11        Q      That's why you gave it to INSCOM or, excuse

12   me -- I apologize.  That's why in your scenario, you

13   gave it to CentCom?

14        A      Yes, sir, absolutely.

15        Q      Because CentCom it best suited to review

16   CentCom information?

17        A      Absolutely, because it's their information

18   and it belongs to them.

19        Q      And if it was a three letter federal

20   agency, it goes to them?

21        A      It goes to them, whether it be the FBI,
```

1 DIA, CIA. Absolutely right.

2   Q   Whoever it is, it goes to them because

3 they're the best suited to make those determinations?

4   A   Right. We're basically forbidden to touch

5 another OCA's information.

6   Q   Now, what if an individual believes, who

7 handles classified information, that something

8 shouldn't be classified?

9   Is there a process in place for them to

10 seek clarification?

11   A   If you believe that it's not classified?

12   Q   If a document is marked secret, but the

13 individual believes it should not be handled as secret,

14 is there a process in place for that individual to seek

15 clarification?

16   A   Yes, there is. There's a challenge

17 process, but you have to go through the appropriate

18 channels. You still have to protect the information as

19 marked whether it's secret, TS or confidential. Until

20 you go through the formal process of a challenge to

21 say, hey, I think that this information may be

1   incorrectly marked or it could be -- needs to be

2   remarked. Now, there's a process by the regulation and

3   you have to go through that process in order to get a

4   validation. Basically, it goes back to the OCA or the

5   OCA representative and if they say the information is

6   secret, then that's the end of it.

7   Q   And that regulation is AR380-5?

8   A   Roger.

9   Q   And that's based off of executive order

10   13526 --

11   A   And it's also in DOD manual, 5200.

12   Q   Which is the parent manual for 380-5?

13   A   Yes, sir.

14   Q   And to just talk about that process for a

15   little bit, if an individual at the user level -- so

16   from your time as an intelligence analyst or us now

17   here, we would then -- you would have a document that's

18   marked secret, correct?

19   A   Roger.

20   Q   And then we would take that document and

21   give it through our technical or security chain?

1   A   Yes, sir.

2   Q   And that would go up through the security

3 chain to be processed to determine whether it is or is

4 not secret or something else?

5   A   Roger.

6   Q   And then it would go up through our chain

7 of command?

8   A   Roger.

9   Q   And then it would go, then, laterally at

10 some point to the owner, the OCA?

11   A   OCA, roger.

12   Q   And then the OCA would then review it and

13 make a decision whether it was properly marked or not?

14   A   It always has to be referred back to the

15 OCA.

16   Q   And there's even a process in place if two

17 OCAs disagree, correct?

18   A   Absolutely.

19   Q   The dispute process under executive order?

20   A   Exactly.

21   Q   And there's a federal entity that's above

 1 all on the executive branch to step in if needed

 2 between classification decisions?

 3   A   Roger. That seldom ever happens.

 4   Q   Because it's resolved by the OCAs?

 5   A   Yes, sir.

 6   Q   And during that whole process a user of

 7 classified information, authorized holder, is required

 8 to treat it as secret, correct?

 9   A   That's protected at all times at the level

10 that it's marked.

11   Q   And that's true if it's on a computer?

12   A   Yes, sir.

13   Q   That's true if it's on a CD?

14   A   Yes, sir.

15   Q   That's true if it's printed?

16   A   Yes, sir.

17   Q   Mr. Hall, you testified earlier that you

18 reviewed the charge SigActs for the CIDNE A and CIDNE I

19 databases, correct?

20   A   Specification 5 through 7, charge 2.

21   Q   Even more precise than I am.

 1   And you did that based off key words you

 2   found when scanning through the documents?

 3   A   Right. It would be a key word, you know,

 4   if KIA or WIA was killed and it had his last name in

 5   there, going to the Google search, punch in his last

 6   name and Afghanistan or the unit, it just comes up. So

 7   usually the first report or the second report. I did

 8   no more than three.

 9   Q   And you've used your experience with saying

10   that the term KAI on its own is not classified, so you

11   could put that in Google, correct?

12   A   Right, KAI wouldn't be classified.

13   Q   But you, when doing that process, you

14   didn't just choose any word on the documents and

15   SigActs?

16   A   No, no, no.

17   Q   You chose obvious words that are doctrinal

18   in nature that you knew were unclassified?

19   A   Roger.

20   Q   And when you did that, you found various

21   open source information that included that specific

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 1  term you looked for?

 2       A     Right.  If I did a search on a KIA, it came

 3  back -- it may have came back with an individual's

 4  name, 101st airborne division and blah-blah-blah.  But

 5  there was nothing detailed, sir.

 6       Q     And when you did that, you didn't find any

 7  actual SigActs that came back?

 8       A     No.

 9       Q     Any SigAct as they're found in the CIDNE

10  database?

11       A     No, sir.

12       Q     You just found some information from some

13  of the SigActs in the open source?

14       A     Roger.

15       Q     Now, when you reviewed the SigActs, did

16  they have a classification marking?

17       A     Yes.

18       Q     And that was all the charge SigActs that

19  you reviewed?

20       A     Roger, top and bottom.  Most SigActs is a

21  paragraph marked.
```

 1   Q   So there were no paragraph markings?

 2   A   No, sir.

 3   Q   And that is a common occurrence for

 4 deployed units doing reporting, correct?

 5   A   Absolutely, because it's just a quick

 6 snapshot of the event that's taken place and from the

 7 ground soldier in the infantry, you're just getting a

 8 quick snapshot of the information of the event that's

 9 happening and then they send it back up the chain.

10   Q   But the rules do require paragraph

11 markings?

12   A   Yeah, further down the line when it's more

13 detailed and they get a chance to go through it and

14 edit it.

15   Q   Okay. And this -- the SigActs, to the best

16 of your knowledge and experience, were put on SIPRNET?

17   A   The ones that I reviewed?

18   Q   Correct.

19   A   I believe so, sir. I don't know. I

20 thought they was inside of the CIDNE database. I don't

21 know.

```
 1        Q     Okay.  So from CIDNE database, you don't

 2   know if CIDNE was on SIPRNET or not?

 3        A     No, I have no idea.  That's a system that

 4   belongs to CentCom.

 5        Q     And in your experience CIDNE actually

 6   postdates your experience in the Army?

 7        A     Correct.

 8        Q     But not necessarily the concept of SigActs?

 9        A     Roger.

10        Q     When you did your open source analysis, you

11   didn't find any analysis or commentary about the

12   information within the SigActs?

13        A     No, sir.

14        Q     When you did your open source analysis, you

15   didn't find any specific identifying information that

16   would identify those actual SigActs?

17        A     No, sir.

18        Q     But you did -- for example, you did find

19   open source information about KAIs or WIAs?

20        A     Yes, sir, and don't I think -- probably by

21   some rule or regulation you don't have to report to KIA
```

 1 | or WIA. So once it goes into the media, you just log

 2 | in. You go on Google search and you're probably going

 3 | to find something regardless.

 4 | Q   For instance, you found U S. government

 5 | official sites that released KIA names, maybe their

 6 | hometowns, their mission and even a general description

 7 | of how they possibly were killed?

 8 | A   Yes, sir, uh-huh.

 9 | Q   But that website nor any other website

10 | explained the details of how our soldiers were killed

11 | in battle?

12 | A   Right, there was no detailed information.

13 | Q   No details like the TTPs that the units

14 | were following, how the ID was in place?

15 | A   No, sir. Not at all.

16 | Q   And with prosecution or -- excuse me,

17 | defense exhibits whiskey and x-rays, the two SigActs

18 | you reviewed and highlighted, the highlights weren't

19 | verbatim, correct?

20 | A   No, they were not.

21 | Q   They were just your best guess based off

 1 | what you found in open source?

 2 | A   You may have had one or two words that was

 3 | the same, but nothing else.

 4 | Q   Okay. So when those highlights might -- it

 5 | was your best estimate that this information in defense

 6 | exhibit x-ray or whiskey was similar to this

 7 | information you found?

 8 | A   Yes, sir. It may have been worded in a

 9 | different way.

10 | Q   So it could say water bottle on a podium

11 | and then you found something that said a container

12 | holding water on a table?

13 | A   Roger.

14 | Q   That's what you highlighted?

15 | A   Yes, sir.

16 | Q   And for both of them, the total number of

17 | highlights probably, you would estimate, would be less

18 | than five percent of the SigAct?

19 | A   Roughly, right, five percent.

20 | Q   And that's sort of just two SigActs?

21 | A   Right, that I highlighted just for the

 1   court's -- to show an example.

 2   Q   But you did find other information in other

 3   SigActs you reviewed?

 4   A   Yes, sir. But as I stated, nothing was

 5   detailed because the SigAct is not meant to be

 6   detailed, it was just the one of the tools of

 7   information that you may find. That's all, nothing

 8   more.

 9   Q   And you testified earlier about your

10   experience as a senior non -- well, really, your entire

11   experience as an intel analyst for the Army as a green

12   suiter?

13   A   Yes, sir.

14   Q   You retired as a master sergeant?

15   A   Yes, sir.

16   Q   You had a lot of experience and analysis

17   from the tactical to strategic levels back and forth?

18   A   Yes, sir.

19   Q   You testified that intel analysts learned

20   how to do pattern analysis?

21   A   I don't remember saying that. I thought I

1 was asked -- I mean, I stated that they have to learn

2 how to do pattern analysis and, when they get to a

3 certain point, you do analysis at an early age in your

4 career, I mean, you're not seasoned enough to do that.

5   Q   So all intel analysts learn about pattern

6 analysis and how it's used, but we don't rely on junior

7 analysts to do pattern analysts until later in their

8 career?

9   A   It's your job doing a lot of research,

10 learning how to research. But in order to be an

11 effective analyst you gotta know what information and

12 research it should be specifically driven -- not

13 driven, but specific on information that's requested is

14 as well as you know, I mean, the PIRs is what runs the

15 commander's intel mission.

16   Q   And what are PIRs?

17   A   Priority intelligence requirements.

18   Q   And can you explain -- you just said PIRs

19 drives the commander's intel mission.

20   Can you please explain to the court what

21 you mean by that?

 1   A   Ma'am, the commander has a set of PIRs and

 2 PIRs stand for the intel that's key to his area of

 3 operation and his information that, as an analyst, you

 4 should key on in collecting any information.

 5   So, in other words, if Al Qaeda is going to

 6 use chemical weapons, okay, it may be a commander's

 7 PIR. So you want to know anything you can and do any

 8 research of anything dealing with chemical weapons that

 9 may be employed by Al Qaeda.

10   Q   And that consent of knowing what the

11 commander is looking for and what your job in the

12 S2 section is, that's a concept known by everyone in S2

13 section?

14   A   It should be, sir.

15   Q   From the junior analyst to the most senior?

16   A   That's right. Roger.

17   Q   And all analysts understand, even junior

18 analysts, that the information they pull will be used

19 for predictive analysis?

20   A   They should understand that, absolutely

21 right.

```
 1        Q    And that's your experience?

 2        A    Yes, sir.

 3        Q    Even the most junior?

 4        A    Uh-huh.

 5        Q    But you did not rely on the most junior to

 6   actually do the predictive analysis?

 7        A    No, no, because they're not experienced

 8   enough.

 9        Q    Okay.

10             MR. FEIN:  And, Your Honor, permission to

11   publish dense exhibit delta-delta?

12             THE COURT:  Go ahead.

13   BY MR. FEIN:

14        Q    So your example, Mr. Hall, you testified

15   that, for example here -- understanding this is

16   completely made up for your testimony...

17        A    Yeah, I just made it up, sir.

18        Q    So in your example here -- this is page

19   1 -- you have three towns, correct?

20        A    Yes, sir.

21        Q    And all junior analysts or senior analysts
```

```
 1   would be able to plot this on a map based on -- or

 2   should be able to?

 3        A     Should be able to.

 4        Q     And that's based off of their skills of

 5   reading a map?

 6        A     Yes, sir.

 7        Q     Okay.  They should be able to explain what

 8   the towns are, town 1, town 2, town 3?

 9        A     Yes, sir.

10        Q     They should be able to explain what the

11   legend is and each of the codes in the legend?

12        A     Yes, sir.

13        Q     That a circle is an ambush, a diamond is an

14   IED, a triangle is an attack on base.  Even junior

15   analysts would be able to get that information from

16   reports?

17        A     Yes, sir.  They should be able to read the

18   legend.  As I stated before, there's gotta be specific

19   focus on the information that they're trying to obtain.

20        Q     And would expect junior analysts still, to,

21   you mentioned, do the research and pull that
```

1 information to be put on this type of map?

2   A   They should be able to plot a "sit map," as

3 we call it, a situation map. So they should be able --

4 as a junior analyst, you should be able to go in and

5 say, hey, I need you to research this information on

6 town 2 and I need any information you can about ambush

7 or IAD attacks. Their job would be to go into the

8 database, pull all of their information and they should

9 be able to plot that information on a map.

10   Q   And in order to pull that information and

11 go into the right database, they have to understand

12 what information they're looking at?

13   A   Absolutely. They should be specifically

14 focused on -- if I said I wanted information on IADs,

15 this should only be researching for IADs.

16   Q   And you would expect that from a junior

17 analyst?

18   A   Absolutely.

19   Q   And if that didn't happen, you would

20 correct the junior analyst?

21   A   I would, sir.

```
 1         Q      And you also testified earlier that that

 2   type of analysis that's done by typically more senior,

 3   but the juniors contribute by doing the research, is

 4   used by commanders and leaders in the field?

 5         A      Yes, sir.  The information is always there.

 6   One the junior analyst does the research, ma'am, he

 7   brings that to the NCO or ICO that's in charge,

 8   understanding that these junior analysts -- by research

 9   and information, he may not understand how to connect

10   the dots.  You have to be able to connect the dots to

11   give the commander the big picture.

12              I can use an example, weapons storage

13   areas, okay?  I'll use weapon storage areas.  I may

14   tell the junior analyst, hey, I need to know

15   information about weapons storage areas.  But if he's

16   not familiar and hasn't been in the system long enough,

17   he would not know where to look.

18              So let's say there's a place that you would

19   store weapons that they don't expect us to find them

20   which would be like a school, church, a library.  So a

21   junior analyst would not necessarily know that.  Okay?
```

1   So once we determine that, then they'd have

2   to be close by, what's their avenue of approach to

3   those locations to receive the weapons or to get the

4   weapons? So that's connecting the dots and once you

5   connect the dots, then you should be able to give an

6   analytical overview of exactly what the threat is.

7   Q   And you would expect the junior analyst to,

8   once they understand that weapon cachets are in

9   schools, to be to go find data on schools and at least,

10 at a minimum, plot the dots?

11   A   Yes, sir.

12   Q   And then maybe connect them or maybe not

13 and get mentorship on how to connect them?

14   A   Right. They may not be able to know how to

15 connect them, but they should be able to know how to

16 plot and research any school within a certain mile

17 there.

18   Q   And from your experience, Mr. Hall, that

19 same process is used by our adversaries, correct?

20   A   Yes, sir. Absolutely.

21   Q   By our adversaries' intelligence

```
 1  organizations?

 2        A      Yes, sir.

 3        Q      And by terrorists?

 4        A      Yes, sir.

 5        Q      And they plot the dots to figure out what

 6  we do?

 7        A      Just as we do the information on them,

 8  they're doing the information on us also.

 9        Q      And if they had the information, that could

10  be useful to them?

11        A      Yes, sir.  Any information is an advantage.

12        Q      So if they now all the troop locations of

13  where our troops were and they had that whole database,

14  they could use it the same way as our junior analysts

15  do?

16        A      Yes, sir.

17        Q      And that's something our senior analysts

18  are trained?

19        A      Yes, sir.

20               MR. FEIN:  No further questions, Your

21  Honor.
```

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 1   THE COURT: Redirect?

 2   REDIRECT EXAMINATION BY MR. COOMBS:

 3   Q   Mr. Hall, with regards to our bases,

 4 locations of our bases -- and you can tell me if you

 5 don't know this, but is it a secret where like Camp

 6 Victory was in Iraq or any particular FOB was in Iraq,

 7 do we try to keep that as a secret?

 8   A   I don't know, sir. I mean, when you deploy

 9 to -- I would think when you deploy to an area that

10 you're going to be operating in, it's probably no

11 secret because a lot of the locals will already know.

12 As a matter of fact, they are some things that are

13 probably a secret that they don't release, maybe a

14 hidden train site that we may have that they don't have

15 knowledge of. But as far as the major bases, of course

16 not when you're deployed into an area. I mean, we're

17 bringing a lot of money into that area and you're going

18 to need the locals' help to get established.

19   Q   As far as the enemy is concerned, I guess,

20 would they need to rely upon anything other than their

21 eyes to see where the soldiers are in Iraq?

```
 1        A     Would they need to rely on anything else?

 2        Q     Yeah, as far as if they see, like Camp

 3  Victory.  I guess -- correct me if I'm wrong, but if

 4  anybody looks at Camp Victory and see that's American

 5  soldiers, that's all they really need to know, American

 6  soldiers are there?

 7        A     Yes, sir.  But they would not know what is

 8  inside of that camp.

 9        Q     Correct.

10              Now, with regards to the open source, you

11  were asked about how the open source might compare and

12  I think the example was a bottle of water on a podium

13  as opposed to a container of water on a table.

14              Do you remember that example?

15        A     Yes, sir.

16              MR. COOMBS:  Your Honor, the defense

17  intends to introduce the open source explanation for

18  the charges SigActs under the same rationale as 703?

19              THE COURT:  Government objection?

20              MR. FEIN:  No objection, Your Honor.

21              THE COURT:  All right.
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 1   A VOICE: Pardon the interruption. We seem

 2   to have a cellphone here in the courtroom.

 3   THE COURT: Anybody that's got a cellphone,

 4   please leave the courtroom. Why don't we put the court

 5   in a brief recess and figure this out. Court in

 6   recess. Please don't discuss your testimony with

 7   anybody.

 8   (There was a recess taken at 3:42 and the

 9   trial resumed at 3:47 p.m.)

10   THE COURT: Please be seated. Call to

11   order. Let the record reflect all parties present at

12   the last recess are again present. The witness is on

13   the witness stand. I trust the cellphone issue has

14   been resolved.

15   BY MR. COOMBS:

16   Q   Mr. Hall, I'm showing you what's marked as

17   defense exhibit echo-echo for identification.

18   Can you take a look at that?

19   A   (Witness complied.)

20   Q   Do you recognize that?

21   A   It's one of the open source that I printed

1 and I released to one of the SigActs.

2   Q   And does that relate to both SigActs?

3   A   Yeah, I have two copies of the two examples

4 in here.

5   Q   And there are highlighted portions within

6 this exhibit. Did you make those highlights?

7   A   I did.

8   Q   Is that what you used in order to compare

9 with the (inaudible) SigActs?

10   A   Yes, sir, with the two that I identified.

11   MR. COOMBS: I offer echo-echo for

12 identification into evidence as defense exhibit

13 echo-echo.

14   THE COURT: All right. Defense exhibit

15 echo-echo is admitted.

16 BY MR. COOMBS:

17   Q   Mr. Hall, you were asked about the

18 classification and the various agencies that would have

19 original classification authority over certain

20 documents.

21   Do you recall that?

          1   A   Yes, sir.

          2   Q   And the government asked you about whether

          3   or not you could declassify certain documents that

          4   didn't belong to you, correct?

          5   A   Right, sir.

          6   Q   Have you declassified documents before?

          7   A   I have.

          8   Q   And what role were you declassifying

          9   documents? How were you doing that?

         10   A   How was I declassifying the documents?

         11   Q   Right. Were you declassifying as the

         12   original classification authority?

         13   A   As the OCA's representative.

         14   Q   And when you made the determination, was

         15   that the determination that declassified it or did

         16   somebody above you have to approve of your

         17   determination?

         18   A   When we declassify the documents? No.

         19   Those -- in the intelligence documents one thing you

         20   have to realize is that most of our information is

         21   basically protected. It basically has a shelf life,

 1 okay, a shelf life maybe 25 years. But it goes beyond

 2 the 25 years.

 3   As I stated earlier, we don't -- we never

 4 release sources and methods. Now, a lot of the

 5 information that comes across my desk has -- contains

 6 sources and methods, but it was also kicked back and

 7 denied. We get requests every day that may come

 8 through -- congressionals has been placed on us because

 9 of information of people seeking certain information.

10 Okay.

11   Once FOIA sends it up to me and the CGS

12 entrusted the G2 directed into me, that we make the

13 decision in the call when it comes to declass guides

14 and he being briefed on the classification guide and

15 what he's responsible for then that he is fully engaged

16 in that because he is the OCA. The declassification

17 works a little different because we have our FOIA

18 office located here in Fort Meade who mostly sends the

19 requests down to us.

20   So let's say that there's a document that I

21 stated that should remain classified or the FOIA

1 process, the way it works is that you have to give them

2 something. So they may get one paragraph that's

3 unclassified and the rest is redacted out. So that's

4 how that process works.

5   Q   And when you make a determination to

6 declassify something, is your determination then the

7 one that declassifies it or does someone else have to

8 approve of that?

9   A   No, no. Our office approves it.

10   Q   And who in your office approves it?

11   A   I am the approving official. It goes to --

12 my director signs off because what we do is we send up

13 a spreadsheet to the CG and to the historian of the

14 documents that haven't been declassified. But probably

15 about 95 to 97 percent of all of our documents contain

16 under equities. So a lot of our documents have to be

17 forwarded to NSA because before INSCOM you had the ASA

18 which was the Army Security Agency which has

19 information that deals with special intelligence that

20 has to go to NSA for the final approval.

21   Q   You were asked questions about, you know,

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 1   if another agency was the equity holder, that you

 2   wouldn't make a classification determination on that

 3   information?

 4        A    No, I would not.

 5        Q    And is that because that's just -- that's

 6   the way the rules are built and it's only the OCA that

 7   can talk about their information?

 8        A    If you really think about it, I mean, why

 9   would my commander at INSCOM declassify something from

10   CentCom?  That's not his area of responsibility.  He

11   doesn't know the information.

12             So it's always been, basically, law and by

13   the regulation that you have to refer back to the OCA.

14             Now, if you have deactivated and let's say

15   it disbanded probably 10, 15 years ago, then I would

16   send it up to the Army G2.  Then they would make the

17   determination.  But we wouldn't make it at INSCOM.

18        Q    And based upon how the classification

19   process works, would you defer to an OCA and that OCA's

20   opinion when it comes to their information?

21        A    Would I defer to the OCA it belonged to?
```

1   Q   Correct.

2   A   Yes.

3   Q   And that is because that's the process that

4   you live under?

5   A   That's the process I deal with that follows

6   the regulation and policy as well as executive orders

7   380-5.

8   Q   And as you sit here today, would you ever

9   disagree with another OCA?

10   A   No, I would not. I mean, I don't think

11   another OCA would either.

12   MR. COOMBS: Thank you.

13   THE COURT: Anything else?

14   MR. FEIN: May the government have a sort

15   recross?

16   THE COURT: Yes, and then following with

17   redirect if you need to.

18   MR. FEIN: Your Honor, I'm handing the

19   witness prosecution exhibit echo-echo, unclassified,

20   and defense -- I'm sorry, I said prosecution. Defense

21   exhibit echo-echo and defense exhibit whiskey and

80

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 1  x-ray.

 2            RECROSS EXAMINATION BY MR. FEIN:

 3       Q    Mr. Hall, those are the two SigActs in

 4  whiskey and x-ray that you reviewed for open source

 5  information?

 6       A    Yes, sir.

 7       Q    And the binder is the information you found

 8  that you highlighted?

 9       A    Right.

10       Q    Could you please flip to defense exhibit

11  x-ray?  That's a five-page SigAct?

12       A    Okay, sir.

13       Q    I'm sorry, it is a five-page SigAct?

14       A    You said x-ray?

15       Q    Correct.

16       A    Yes, sir.

17       Q    And when you searched in the open source

18  information that's in that binder, you highlighted

19  information in the binder that you think matches the

20  information in the SigAct, correct?

21       A    Roger.
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 1        Q      But not necessarily exactly?

 2        A      Right.

 3        Q      And so whether it is the podium water

 4   bottle example or something else, any other example in

 5   there, they aren't necessarily identical?

 6        A      Roger.

 7        Q      And based off your experience, then, is

 8   there a difference between the actual U.S. government

 9   information as released by the government versus

10   something that's in the public domain?

11        A      Of course there's a difference.

12        Q      And what's the difference ?

13        A      The government information is protected and

14   it's a lot more in detail.  With the open source, you

15   get a quick snapshot of maybe one word or two words.

16   That just tells you of an incident that may have

17   happened, but you do not get any of other identifying

18   data, so to speak, as in any of the classifications,

19   stuff like that.

20        Q      And are intel analysts, even junior ones,

21   trained that information that is U.S. Government
```

 1 information is more valuable to the enemy than open

 2 source information?

 3   A   Oh, yes.

 4   Q   And why is that?

 5   A   Because, I mean, it's something that

 6 belongs to the U.S. government and it's protected.

 7 It's protected for a reason.

 8   Why would we want to release that to anyone

 9 outside of the U.S. Government?

10   Q   And, sir, you would agree by looking at

11 defense exhibit whiskey and x-ray right there that

12 those SigActs include details of missions?

13   A   Uh-huh.

14   Q   Details of what they -- what the missions

15 did?

16   A   Yes, sir.

17   Q   It isn't just, necessarily, a snapshot in

18 time?

19   A   No. Some -- as I stated before, some

20 SigActs can be detailed, but when they first report a

21 SigAct, it's not probably not detailed. So when they

```
 1  get back, they can edit and make it more detailed

 2  information.

 3       Q     And that's what -- the type of information

 4  you saw in all of the SigActs you reviewed for this

 5  case?

 6       A     Right.

 7       Q     Thank you.

 8            MR. FEIN:  Your Honor, I'm retrieving

 9  defense exhibits whiskey and x-ray and echo-echo.

10            THE COURT:  Any final redirect?

11            MR. COOMBS:  No redirect.

12            THE COURT:  I'm just a little confused on

13  declassification questions.

14            Now, when you're declassifying something,

15  do you have the final file -- you have a FOIA request

16  coming in and they want ten classified documents.

17            Now, when you're making these

18  declassification decisions, are you doing it -- you

19  said that the documents have a shelf life.  So say the

20  shelf life says or the document says it's due for

21  declassification in five years.
```

 1   THE WITNESS: Yes, ma'am.

 2   THE COURT: Do you have the authority to

 3 say, well, I'll declassify it now?

 4   THE WITNESS: If it's information that we

 5 can release. But keep in mind, as I stated with intel

 6 information, we go way beyond the 25-year mark because

 7 of the sources and methods and the type of information.

 8   Most information that I've seen that have

 9 came across my desk since I been in INSCOM has been

10 either history related, it's been a lot of sources and

11 methods, but a lot of our information is embedded with

12 NSA.

13   So, as I stated, we was under the old ASA,

14 Army Security Agency. So, therefore, defenses --

15 there's probably, like, four boxes that I had to ship

16 to NSA. So they have a year, basically, to get it back

17 to you. Well, they didn't get it back to me until

18 probably for about 13 months. But their decision was

19 that this information remains protected because we had

20 to defer to them because, under the old ASA, the

21 information, even though we created the information,

 1 but it has some special intelligence that was inside.

 2   So to answer your question, ma'am, yes, I

 3 can. But we have to use judgment when we do that. The

 4 FOIA office, our FOIA office that belongs to us here up

 5 in Fort Meade, when they send the documents down --

 6 because they handle all the congressional that's put on

 7 us. So, for instance, I got a call one day about a

 8 couple of documents and they say, hey, Mr. Hall, we

 9 really need for you to look at this again because it

10 had came across my desk like about four times.

11   So she said, hey, look, we got to give them

12 something. I said, well, okay, this is what we can do.

13 So we work together as a team understanding that they

14 have to give the requester something but as far as it

15 to remain classified, for it to be declassified, that

16 rests with us in the G2.

17   THE COURT: Thank you. Any followup based

18 on that?

19   MR. COOMBS: No, Your Honor.

20   MR. FEIN: Yes, ma'am.

21   RECROSS EXAMINATION BY MR. FEIN:

```
 1        Q     Mr. Hall, I listened to your example.

 2              Why did you use 25 years when you said

 3   shelf life of 25 years?

 4        A     Why do we use it?

 5        Q     Where does that number 25 come from?

 6        A     It's an executive order.

 7        Q     And what is that number?

 8        A     13526.

 9        Q     I'm sorry.  What is the number 25 years?

10   Why is that significant?

11        A     Because it's for HUMINT, for HUMINT

12   intelligence.

13        Q     And that's the default setting, the default

14   declassification date?

15        A     Uh-huh.

16        Q     So even in an example of two months, one

17   month, five years, 25 years, when you get a document

18   for declassification, it could be extended past that

19   declassification, correct?

20        A     Actually, under the new policy, if

21   something has comes out within the intel community,
```

1 HUMINT information is declassified at 50 years. So,

2 actually, you're getting the total close to 75 years

3 out of HUMINT information.

4   Q   Okay. But even if it's not HUMINT intel,

5 it could be --

6   A   Intel, right, it's still...

7   Q   Any type of classified information, when

8 you receive it for declassification, the mandatory

9 declass state doesn't necessarily mean it's

10 declassified?

11   A   No. You can extend it now for another 25

12 years.

13   Q   And no matter what date is on that

14 document, it still goes through a review process?

15   A   Absolutely.

16   MR. FEIN: Thank you.

17   THE COURT: Temporary or permanent excusal?

18   MR. COOMBS: Permanent.

19   THE COURT: Mr. Hall, you are permanently

20 excused. You're free to go or stay in the courtroom.

21   THE WITNESS: Yes, ma'am.

1   MR. COOMBS: Defense calls Mr. Ganiel.

2   Whereupon,

3   CHARLES GANIEL,

4   called as a witness, having been first duly sworn to tell the truth,

5   the whole truth, and nothing but the truth, was examined and testified

6   as follows:

7   MS. OVERGAARD: Mr. Ganiel, are you Charles

8   Ganiel?

9   THE WITNESS: Yes, ma'am.

10   DIRECT EXAMINATION BY MR. COOMBS:

11   Q   Mr. Ganiel, are you a security specialist

12   with the Army's test and evaluation command?

13   A   Yes, I am.

14   Q   And how long have you been there?

15   A   Since March 2010.

16   Q   And were you assigned as a security expert

17   for defense in this case?

18   A   Yes, I was.

19   Q   And when was that?

20   A   Around August 2010.

21   Q   And how were you specifically assigned to

1 the defense?

2   A   After you requested a security specialist

3 be assigned to the defense team, we got the call to go

4 to the Pentagon for a briefing and Major Fein actually

5 told me I was going to be assigned to the defense team.

6   Q   And when you became a part of the defense

7 team at that point, did I start to use you as my

8 defense expert?

9   A   Yes.

10   Q   And in that role, did you review the charge

11 diplomatic cables in this case?

12   A   Yes, I did.

13   Q   Did you also review the classification

14 review by Ambassador Patrick Kennedy?

15   A   Yes, I did.

16   Q   Mr. Ganiel, are you prepared today to tell

17 us about your review of the charged diplomatic cables

18 in this case?

19   A   Yes, I am.

20   Q   Let's begin by talking about your general

21 background. Okay?

```
 1        A      Okay.

 2        Q      How long -- well, actually, how did you get

 3   hired by the Army tested evaluation command?

 4        A      I applied for the job and was hired based

 5   on my experience and past assignments.

 6        Q      Can you describe for the court what you do

 7   on a typical day with ATEC?

 8        A      I'm the command special security office.  I

 9   have oversight on all the sensitive department of

10   information facilities throughout the command.

11               I also make sure all the SCIFs have all

12   their accreditations, may sure all the classified

13   information is being properly protected and I write

14   specific ATEC SCIF policy and also conduct inspections.

15        Q      Have you ever been in the military?

16        A      Yes, I have.

17        Q      And how long were you in the military?

18        A      Just shy of 28 years.

19        Q      And what was your MOS in the military?

20        A      I was a 3PO, security police which is

21   broken is broken down into security specialist and law
```

 1   enforcement specialist. I was the security specialist.

 2   Q   And can you tell the judge briefly some of

 3   previous assignments you had while in the military?

 4   A   I'll just sum it up. Through all my

 5   assignments I had, for the first 16 years I did

 6   everything from patrolman to alarm monitor to night

 7   sergeant to desk sergeant to personal security,

 8   information security, quality control evaluator. Then

 9   I did a special duty assignment as a first sergeant and

10   then, after that, I came back to the security career

11   field and I was security forces manager at (inaudible)

12   Air Force base.

13   Q   And what did you do as the security forces

14   manager?

15   A   Oversaw all the enlisted personal, security

16   personnel assigned to the unit as well as the Navy

17   security guards and DOD contractor guards.

18   Q   When did you retire from the military?

19   A   April 1st, 2007.

20   Q   And what was your rank at the time of your

21   retirement?

```
 1        A      Chief master sergeant.

 2        Q      Is that an E9?

 3        A      E9.

 4        Q      What did you do after retiring?

 5        A      I was hired by the Bowen Company in

 6   St. Louis, Missouri.  I was hired as an industrial

 7   security specialist and there I did contractor special

 8   security officer duties, responsible for protecting

 9   Bowen proprietary and government classified

10   information, basically.

11        Q      And how long were you with Bowen?

12        A      About two years.

13        Q      And then where did you go?

14        A      I was hired by the defense contract

15   management agency.  I was the manager of security

16   information technology for the special programs branch

17   on the west coast.

18        Q      And what did you do in that position?

19        A      Oversaw all security, basically, on all of

20   our different facilities through DCMA.

21        Q      And how long were you in that position?
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 1        A      About 13 months.

 2        Q      After that, where did you go?

 3        A      Then I was hired by ATEC.

 4        Q      How many years in total have you been

 5   handling classified information?

 6        A      I would say off and on probably 34 years.

 7               MR. COOMBS:  Your Honor, at this time, we

 8   tender Mr. Ganiel as a security subject matter expert

 9   in dealing with classified information.

10               THE COURT:  Any objection?

11               MS. OVERGAARD:  The government would object

12   to "dealing with."  But the government would not object

13   to handling classified information.  He testified that

14   his expertise was in actually handling classified

15   information, not necessarily in the content of the

16   information.  But in actually handling the information.

17               THE COURT:  So tell me the phrase you used?

18               MR. COOMBS:  I said in dealing with

19   classified information.  I believe he said on and off

20   he's been dealing with classified information for 34

21   years.  But I think it's little bit of semantics unless
```

1   the government believes there's a difference between

2   dealing with and handling.

3   MS. OVERGAARD: The government is not

4   exactly sure what "dealing with" means.

5   THE WITNESS: I was going to say dealing

6   with classified is anything known to have protected

7   information on how to use it, how to properly store it,

8   whether it's a hard document or it's a piece of

9   equipment or it's a nuclear weapon, whatever.

10   MS. OVERGAARD: And the government would

11   agree with all of those specific characterizations.

12   THE COURT: All right. We'll use the world

13   dealing to encompass the characterizations the witness

14   just described.

15   So you're not looking at going beyond that,

16   right?

17   MR. COOMBS: No, your Honor.

18   BY MR. COOMBS:

19   Q   Mr. Ganel (sic), let's turn to what you did

20   in this case.

21   A   Ganiel.

1   Q   I'm sorry, Mr. Ganiel. I apologize.

2   First, can you tell the court generally

3   what you did in this case?

4   A   Reviewed the cables. And then after that,

5   reviewed the OCA's determination, then did some open

6   source information review.

7   Q   And why did you review the charge diplomat

8   cables in this case?

9   A   Just to see what their classification level

10   was.

11   Q   And how did you conduct the review of the

12   cables?

13   A   As far as doing the open source or...

14   Q   As far as how did you identify which cables

15   and --

16   A   We looked at the charge cable sheet and

17   just verified what the classification was and then

18   compared that with the OCA's determination.

19   Q   And did you review all of the cables in

20   this case?

21   A   The charge cables, yes.

1   Q   How many cables did you review?

2   A   I think it was 125.

3   Q   And with regards to the classification

4 determination, you said you also reviewed the OCA's

5 classification determination?

6   A   Right.

7   Q   And why did you review that?

8   A   Just to see why the OCA determined it

9 should be -- the cable should still remain classified

10 and his determinations behind that or his reasons

11 behind that.

12   Q   And what did you do after reviewing the

13 OCA's classification determination?

14   A   I then did an open source search for

15 information relating to that cable.

16   Q   And I imagine -- did you do open source in

17 all 125 cables?

18   A   Yes.

19   Q   And how did you capture the open source

20 information or how did you conduct that research?

21   A   We just did, basically, a search, anything

1 prior to the actual Wikileaks release. Just put a date

2 in there and maybe look for a word or two or any event

3 that may have happened.

4   That's how we did our search.

5   Q   And can you explain that process as far

6 as -- let's say you take a particular cable.

7   What would you do to find the open source

8 information?

9   A   For some of the cables, for instance, Major

10 Hurley would say, hey, look for this or look for this

11 and that's what we'd do and we'd put a date range in

12 there. If something came out that we thought related

13 to that cable, what they were talking about, that's

14 what we printed off.

15   Q   When you say a date range, how did you do

16 your date range?

17   A   Anything basically prior to the Wikileaks.

18 Let's say the cable was written in March 2003.

19 Anything prior to March 2003 to anything prior to the

20 Wikileaks release.

21   Q   Once you found the open source --

 1   THE COURT: Wait a minute. Anything prior

 2   to March 25, 2003?

 3   THE WITNESS: Let's say the cable was

 4   written March 2003. So we may have gone maybe February

 5   2003 until whenever the Wikileaks release was.

 6   BY MR. COOMBS:

 7   Q   How did you organize the open source

 8   information once you found it and printed it?

 9   A   Just put it in different binders.

10   Q   And can you explain that?

11   A   Yeah, we highlight the binders or

12   highlighted what we found in the open source that we

13   thought compared to the cable itself and then put them

14   in the binders and then highlighted the same thing on

15   the cable.

16   Q   And how many of the cables were you able to

17   find open source information on?

18   A   I believe it was all but probably two of

19   the cables.

20   Q   Sorry, go ahead.

21   A   One or two of the cables I think we didn't

```
 1  find something on.

 2       Q     And when you found open source information,

 3  did you find multiple examples of open source

 4  information for the cables?

 5       A     Yes.  In some instances, there may have

 6  been four documents that we found that we printed out.

 7  There may have only been one.  I might have had three

 8  depending on what it was.

 9       Q     And based upon the information that you

10  found, did you reach any conclusions about the charge

11  cables?

12       A     I just felt that a lot of the information

13  was already out in the public domain by doing my

14  research.

15       Q     Mr. Ganiel, have you ever worked for the

16  Department of State?

17       A     No.

18       Q     Does your job require you to review

19  information for the Department of State?

20       A     No, it doesn't.

21       Q     Have you ever been or are you now an
```

 1 original classification authority?

 2   A   No, I'm not.

 3   Q   In your field, would you ever publicly

 4 disagree with an original classification authority?

 5   A   No. In our field, the OCA's determination

 6 is binding. What he says goes. If he says it's

 7 secret, that's how you treat it. Just like -- let's

 8 say my two star came to me and said let's do this,

 9 let's change this, let's change this policy or

10 whatever. I may disagree with him. We may talk about

11 it behind closed doors. But when we leave that door,

12 we do what he says.

13   Q   Now, in this instance are you disagreeing

14 with the OCA's determination regarding the charge

15 cables?

16   A   No, I'm not.

17   Q   Mr. Ganiel, I'm handing you what's been

18 marked as defense exhibit Yankee for identification and

19 then also defense exhibit zoo for identification. Take

20 a look at both of those and then look up to me when

21 you're done.

1   A   (Witness complied.)

2   Q   Do you recognize those two exhibits?

3   A   Yes, I do.

4   Q   How do you recognize them?

5   A   It's one or two of the cables that we

6   looked and we found open source information on them and

7   we highlighted those cables or I highlighted those

8   cables.

9   Q   And you said you highlighted those cables.

10   Do both of those exhibits have highlights

11   in them?

12   A   Yes, they do.

13   Q   And how did you determine what information

14   to highlight?

15   A   If we found something in the open source

16   that we thought matched up with it, that's -- we would

17   highlight it.

18   Q   And did what you found in the open source

19   match up verbatim, word for word?

20   A   No.

21   Q   So how did you determine, when you looked

 1 at something in the open source, that that would

 2 something that you would highlight in the charge

 3 cables?

 4   A   Well, let's say one of these had to do with

 5 an event that happened maybe in Africa. If we found

 6 something similar to that that looked like it matched

 7 up, that's what I would highlight.

 8   Q   And did you do this for all 125 cables?

 9   A   No, I didn't.

10   Q   And why not?

11   A   That would have been -- that would have

12 taken forever. Too time consuming. I just wanted to

13 do this as an example of what we thought was already

14 available on the open source. We probably could have

15 done that if we took the time to do it at all.

16   MR. COOMBS: Your Honor, at this time, I'm

17 retrieving both exhibits from the witness. And the

18 defense moves into evidence defense exhibit yankee and

19 defense zoo for identification.

20   MS. OVERGAARD: The government would just

21 request that, based on the highlights in those cables,

 1 that the data that the expert used to underline -- that

 2 underlines his opinion would also be admitted, ma'am.

 3 That would assist the fact finder in actually

 4 determining the probative value of the expert's

 5 opinion.

 6   THE COURT: Are you planning on doing that

 7 as well?

 8   MR. COOMBS: At the government's request,

 9 that's not a problem. I'll just have it marked, Your

10 Honor.

11   THE COURT: Other than that, no objection?

12   MS. OVERGAARD: No objection, ma'am.

13   THE COURT: All right. Defense exhibits

14 yankee and zoo are admitted.

15 BY MR. COOMBS:

16   Q   And while the court reporter is marking the

17 open source information, I'll have you identify that.

18   Does that open source information contain

19 the specific paragraphs where you might be able to find

20 the information in the charge documents?

21   A   We have another that we also marked like

1 that that we try to match it up with that.

2   Q   So, if asked, you could highlight or you

3 could show where any open source information -- in

4 addition to just the highlights, where exactly that

5 open source information would be found in the charge

6 cables?

7   A   Right.

8   Q   I'm showing the witness what is marked as

9 defense exhibit -- I'll go ahead and mark it for

10 identification.

11   Can you look at that?

12   A   (Witness complied.)

13   Okay.

14   Q   Mr. Ganiel, do you recognize exhibit

15 foxtrot-foxtrot?

16   A   Yes, this is the open source that I

17 highlighted that I thought matched up to cables.

18   Q   Retrieving the exhibit from the witness.

19 At this time defense moves into evidence --

20 foxtrot-foxtrot for identification into evidence as

21 foxtrot-foxtrot.

 1   THE COURT: All right. Defense Exhibit FF

 2 is admitted.

 3   MR. COOMBS: No further questions.

 4   THE COURT: Government?

 5   MS. OVERGAARD: One moment please, Your

 6 Honor.

 7   CROSS EXAMINATION BY MS. OVERGAARD:

 8   Q   You said, Mr. Ganiel, that your expertise

 9 is in protecting classified information, correct?

10   A   Yes, ma'am.

11   Q   And not in evaluating Department of State

12 content?

13   A   That's correct.

14   Q   And you are trained specifically on the

15 procedures of protecting the physical four corners of

16 the document?

17   A   Yes, ma'am.

18   Q   And other physical -- you talked about

19 missiles and airplanes, things of that nature?

20   A   Right.

21   Q   So you know enough about the content to

```
 1  refrain from disclosing or confirming government

 2  information inappropriately?

 3       A     Yes, ma'am.

 4       Q     But you rely on those markings that are

 5  actually on the documents?

 6       A     Yes, ma'am.

 7       Q     Why is it important to protect that

 8  information?

 9       A     Well, it's the government's close held

10  secrets.  They own the information and I can't disagree

11  with what they say and how they mark it.  So we're

12  obligated to protect it.

13       Q     And when you say they, who is in the best

14  position to determine the interests or risks implicated

15  by the classified information?

16       A     The OCA.

17       Q     And why is that?

18       A     They basically own the information.  They

19  market it.  They chose the classification labels.

20       Q     And you know that, when the OCA classifies

21  something, it has to be treated that way?
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 1        A      Right.

 2        Q      And that regardless of your personal

 3 beliefs?

 4        A      Right.

 5        Q      And you said you reviewed some of the

 6 charge cables?

 7        A      All 125 cables.

 8        Q      You reviewed all 125, but you highlighted

 9 just some of the charge cables?

10        A      Yes.

11        Q      Okay.  And that was based on key words that

12 were pulled out by you or Major Hurley or someone else

13 on the team?

14        A      Right.

15        Q      And you limit it by a date range?

16        A      Date range.  Anything prior to the actual

17 Wikileaks release, basically.

18        Q      Okay.  So what was that date, do you

19 remember?

20        A      Sometime in 2009 or '10.  I'm not sure of

21 the exact date.
```

1 Q   Okay. And the majority of the cables that

2 they looked at had both classified and unclassified

3 portions in them; is that correct?

4 A   Right.

5 Q   And the searches that you actually did in

6 open source, they are you all unclassified?

7 A   The searches?

8 Q   Yes. You weren't typing classified

9 information into Google?

10 A   No. Whatever words he would give us, we

11 just type in there and look for it. Just because the

12 paragraph is classified, you don't know exactly what

13 word in there was classified. It could have been one

14 word or it could have been a whole paragraph.

15 Q   But the searches that you actually

16 conducted on Google, they were unclassified, correct?

17 A   Right.

18 Q   And the majority of the information that

19 you found was from news sites?

20 A   What is news sites?

21 Q   In the examples that I was looking at with

 1 | CNN and it was --

 2 | A   Oh, news sites. It could have been a

 3 | paper. It could have been anything.

 4 | Q   Okay. But not many examples from official

 5 | U.S. Government sources?

 6 | A   No.

 7 | Q   And regardless of the source of the

 8 | information, you basically pulled up factual

 9 | information, correct?

10 | A   That we thought related, yes.

11 | Q   So, like, this person was a leader of this

12 | country at this time?

13 | A   Right.

14 | Q   Or this person was here. I think that was

15 | example you gave me before. This person was here at

16 | this particular time?

17 | A   Right.

18 | Q   You said open source information existed on

19 | all but two of the cables, about?

20 | A   I'm pretty sure it was all but two.

21 | Q   That was just the general factual

```
 1  information that you recall?

 2        A     Right.  Nothing is word-for-word.  It's

 3  just -- it could be a couple words here, couple words

 4  there.  Maybe something else that happened that we

 5  found in there.

 6        Q     And did you find any information in open

 7  source where the government confirmed any of the

 8  classified information in the cables?

 9        A     No.

10        Q     Or any U.S. Government analysis that was

11  actually in those cables?

12        A     No.

13        Q     Or any official U.S. Government commentary

14  that was in those cables?

15        A     No.

16        Q     And you never found in any of them all of

17  the information that was in the cables?

18        A     No.

19        Q     And when you did your -- when you did the

20  highlights and when you did your estimation of what was

21  or wasn't in open source that was actually in the
```

1 cables, did you look at how the paragraphs were marked,

2 whether the paragraphs in the cable were SBU, which was

3 sensitive but unclassified, or unclassified or if they

4 were confidential or secret?

5   A   We looked at the cable and then we just --

6 whatever words they came up with to research, that's

7 what we do.

8   Q   But when you did your actual -- you said

9 before a lot of the information you felt or at least

10 some of the information was in the open source.

11   Did you break it down by what in the cable

12 was unclassified versus what in the cable was

13 classified?

14   A   No.

15   MS. OVERGAARD: We're retrieving defense

16 exhibit yankee and foxtrot-foxtrot. Let's compare some

17 of these. It's somewhat difficult to do in an open

18 forum, but I'm just going to generically describe

19 things to you and if could you just generically point

20 them back. Maybe, actually, if you marked on the

21 document that would be easier so then the judge

```
 1  could --

 2              THE COURT:  It's already admitted.

 3              MS. OVERGAARD:  So don't mark on the

 4  document.  So if you could just describe, generically,

 5  where the information is?

 6              THE COURT:  You want to make a xerox of the

 7  document and admit another A or B?  We can do it that

 8  way.

 9              MS. OVERGAARD:  That would probably be

10  easier.

11              THE COURT:  You want to take a recess?  Any

12  objections?

13              MR. COOMBS:  No objections, Your Honor.  If

14  it would help, we also have a premarked exhibit for

15  this that shows by paragraph where it's located if it

16  may assist the government.

17              THE COURT:  Why don't we take a brief maybe

18  ten-minute recess?  Is that long enough to figure this

19  out?

20              MR. COOMBS:  Yes, Your Honor.

21              THE COURT:  All right.  Mr. Ganiel, please
```

 1 don't discuss your testimony of knowledge of the case

 2 with anyone during the recess. The court is in recess.

 3   (There was a recess taken at 4:24 and the

 4 trial resumed at 5:52 p.m.)

 5   THE COURT: Please be seated. The court is

 6 called to order. Let the reflect all parties present

 7 when the court last recessed are present in court. The

 8 witness is on the witness stand.

 9   Now, during the recess, which was extended

10 several times, I believe the parties were trying to

11 figure out a way forward with this witness...

12   MR. FEIN: Yes, ma'am.

13   THE COURT: And the way forward is?

14   MR. FEIN: Yes, ma'am. The parties agreed

15 jointly that the best way forward for the remainder of

16 the at least cross-examination of Mr. Ganiel is to

17 actually meet with the government tonight, actually go

18 through this documentation to create a separate set of

19 the document to mark up similar to what he did with

20 defense and that would allow this to be a much more

21 streamline process. Essentially it's almost a MRA

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 1   505 substitute instead of having to either close the

 2   session based on the classified information or use

 3   numbers and references.  It's just a much easier and

 4   more efficient use of the court's time.

 5           THE COURT:  All right.

 6           MR. FEIN:  I'm sorry, and we propose the we

 7   recess for the night now and meet with the witness

 8   tonight and then we'll reconvene at 9:30 tomorrow to

 9   start the cross-examination.

10           THE COURT:  All right.  Defense, do you

11   concur with that course of action?

12           MR. COOMBS:  Yes, Your Honor.

13           THE COURT:  And during the recess I had

14   several items with counsel to basically discuss the way

15   forward with respect to this witness as well as another

16   witness who will be testifying tomorrow, Mr. Benkler.

17           Do we have any outstanding issues to

18   address with him?

19           MR. FEIN:  No, ma'am.  Professor Benkler

20   will be here tomorrow morning ready to testify.

21           MR. COOMBS:  Defense concurs.
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 1   THE COURT: All right. Is there anything

 2 else we need to address at this point before we recess

 3 the court until 09:30 tomorrow?

 4   MR. COOMBS: No, ma'am.

 5   MR. FEIN: No, ma'am.

 6   THE COURT: Mr. Ganiel, please don't

 7 discuss your testimony or knowledge of the case with

 8 anyone other than counsel or the accused during the

 9 recess and we'll see you at 09:30 tomorrow morning as

10 well. Court is in recess.

11   (Court adjourned at 5:55 p.m.)

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United States vs.
PFC Bradley E. Manning

UNOFFICIAL DRAFT
07/09/13 Afternoon Session

- Vol. 16
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